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POTENTIAL INEQUITIES AFFECTING WOMEN

HEARINGS

BEFORE THE

COMMITTEE ON FINANCE

UNITED STATES SENATE

NINETY-EIGHTH CONGRESS

FIRST SESSION

ON

S. 19 and S. 888

JUNE 20, 21 AND AUGUST 2, 1983

Part 3 of 3
(Administration's Views)

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POTENTIAL INEQUITIES AFFECTING WOMEN

TUESDAY, AUGUST 2, 1983

U.S. SENATE,
COMMITTEE ON FINANCE,
Washington, D.C.

The committee met, pursuant to notice, at 2:43 p.m., in room SD-215, Dirksen Senate Office Building, Hon. Robert Dole (chairman) presiding.

Present: Senators Dole, Packwood, Chafee, Durenberger, and Bradley.

[The prepared statements of Senators Dole and Durenberger follow:]

STATEMENT OF SENATOR DOLE

I am pleased to welcome you to this hearing on the pension policy concerns addressed in S. 19—the Retirement Equity Act of 1983—and in S. 888—the Economic Equity of 1983.

We held two days of hearings last June to receive comments from the public on these bills. At that time, I mentioned that S. 19 and S. 888 gave this Committee an opportunity to examine various alternatives to achieve the same goal—a more secure retirement income for all American women, both those who work in the home and those who receive wages for work outside the home. The written and oral comments that we received during those two days of hearings will assist us in finding the best way to achieve this goal.

I stated at those hearings that I had received a letter from the Treasury Department declaring the Administration's strong support of the goal of S. 19 and S. 888, and indicating that the Treasury Department and other departments within the Administration were actively studying the changes that would be required by the two bills. The letter requested an opportunity to comment on the bills when their review was completed.

I know that many members of the Administration have devoted a great deal of time and effort in order to develop proposals that address the issue of pension equity. I am looking forward to receiving the Administration's comments at this hearing today, and to working with all interested members of Congress and the Administration to develop legislation that achieves the goal of retirement equity.

STATEMENT BY SENATOR DAVE DURENBERGER

Mr. Chairman, I am extremely pleased that the Senate Finance Committee is holding this hearing today. Once again, I want to commend you, Mr. Chairman, for the strong leadership role you have taken in promoting economic equity for women.

I am encouraged by the Administration's participation in this hearing and am hopeful that the Administration will be supportive of our efforts to eliminate many of the economic inequities faced by American women. The "gender gap" is a serious problem the Republican party must address and it is, in large part, a product of economic inequity experienced by women, blessed by legislative endorsement, and exacerbated in times of economic difficulty such as we have been experiencing. The President's endorsement of legislation eliminating such discrimination would be a critical first step in overcoming the "gender gap."

In June, this Committee had an opportunity to formally examine the Economic Equity Act (S. 888). It was the first time a Senate committee had thoroughly considered such a comprehensive piece of legislation to eliminate discrimination against women. Mr. Chairman. I am even more convinced, after reflecting on the testimony presented at those hearings, of the seriousness of this problem and the urgent need for reform.

The disparity that exists between men and women should shock the conscience of a nation founded on the principle of equal opportunity. We have allowed women to work around the clock for our society, but we have turned our backs when the time came to reward their achievements. We have paid lip service to our belief that all are created equal. In practice in America equal creation has never meant equal treatment under the law.

Society has encouraged women to raise and care for their families, but has refused to recognize the invaluable efforts of the homemaker as "work." We have required working women to fight many impediments, both physical and psychological, to success in the workplace. In short, women in our society have been the victims of discrimination imposed in a "man's world."

Just about every woman in this country will face one or more of the following economic barriers sometime in her working life: longer work requirements for pension vesting rights; termination of her survivorship benefits; denial of pension survivorship benefits; inability to afford high quality dependent care; failure to obtain employment because of a lack of training or experience; and, failure to collect child support.

Our hearings in June made it painfully clear that these economic inequities are not isolated instances—they affect real people and real families. It was heart-wrenching to learn of the impact they have had on the lives of the women and families they have touched.

Mrs. Geneva Burgess, of Glen Burnie, Maryland, widowed at an early age, testified that her husband's pension was denied to her, despite many years of marriage and family partnership, because he did not live until age 55.

"Mr. Chairman. It's probably too late for me. But it is not too late for thousands of women who lose out this year or the next. It's not too late for someone like Patricia Tice who also lives in Maryland and who told me that her husband is dying of cancer at age 50. She has written to I.B.M. to see about getting a share of his benefits. But even after 23 years with the company, when Mrs. Tice moved frequently with her husband to further his career, she will be out of luck if he doesn't make it another 5 years. She was crying to me on the phone because she knows he won't make it. I ask for her sake and the sake of thousands of other women who count on their husband's pensions to get by, for you to change the law."

Mrs. Burgess, and countless other women like her, have been denied thousands of deserved dollars because of inequities in our pension laws. The Economic Equity Act would eliminate many of these hardships.

Six women traveled to Washington in a van from Flint, Michigan, to present their case for the urgent need for child support reform to this Committee on June 21st. These dedicated mothers are the victims of our failure to demand that absent parents assume financial responsibility for their children. Patricia Kelly, founder of an organization called KINDER, presented testimony identifying the need for Title V of the Economic Equity Act.

"For millions of women like myself child support is the lifeline enabling us to be self-supporting and productive. The extremely high costs of housing, food, clothing, utilities and child care along with the fact that many women have few job skills and choose the traditional role of mother and housewife first, results in female heads of households and their children becoming poverty stricken after divorce."

I have been deeply troubled by this issue for a number of years. In 1981, when I first introduced the Economic Equity Act, I called upon the Department of Justice to conduct a study of this problem and recommend solutions.

I am proud to have introduced Title V of the Economic Equity Act which is designed to improve and expand the IV–D program in order to return responsibility to those individuals who should properly bear such obligations.

Although I have expressed several reservations about the Administration's child support funding proposal, I want the record to show that this is a much more realistic position than its earlier emphasis on AFDC collections to the exclusion of non-AFDC cases. The current Administration proposal moves in the

direction of the Economic Equity Act—namely, it recognizes the importance of collecting both AFDC and non-AFDC support. For this the credit belongs to the Secretary of Health and Human Services.

Secretary Heckler is to be commended for her continuing efforts to expand child support enforcement. Her recognition of the need to broaden the IV–D program is evidence of her awareness of the seriousness of this program.

I am encouraged by the attention currently being devoted to the child support issue, but continue to believe the most effective way for Congress to address child support enforcement is to pass S. 888 with all its other reinforcing provisions for economic equity.

It is a comprehensive bill divided into five sections: tax and retirement; dependent care; discrimination in insurance; reform of Federal regulations that discriminate; and stricter enforcement of child support.

I urge the Committee members to keep in mind the fundamental purpose of the EEA: to ensure that the Federal Government plays a constructive role in removing obstacles to economic equity, rather than a destructive role of creating or even maintaining these obstacles.

One criticism I am certain will be raised today, and that is the charge that we cannot afford the Economic Equity Act. To that charge my answer is, we cannot afford not to have an EEA. For two centuries of our history the cost of economic inequity has been borne by women.

The public and private sectors have long operated on the basis of risk sharing. The same is true of economic equity for women.

Although my name is first on the bill, the EEA represents the efforts and hard work of hundreds of people who labored thousands of hours. On behalf of all of them and the millions of women they represent, I urge Congress and the Administration to act quickly and fairly on this legislation. Society will benefit from these changes.

Senator DURENBERGER. The meeting will come to order.

I have a brief statement that I will, without objection from anyone, put in the record. I will express the regrets for the chairman, who is doing this morning's business this afternoon on the floor—namely, railroad retirement, and other matters. But I am extremely pleased that the Senate Finance Committee is holding this hearing today, and I want to commend its chairman for the leadership role that he is taking in promoting economic equity for women.

I am encouraged by the administration's participation in the hearing and am hopeful that the administration will be supportive of our efforts to eliminate many of the economic inequities faced by American women. The so-called gender gap is a serious problem. It is a problem that right now the party to which I belong, which is the majority party of the Senate and the party of the President, has a special responsibility to address. And it is in large part a product of economic inequity experienced by women in this country, blessed by legislative endorsement, and exacerbated in times of economic difficulty such as we have been experiencing. The President's endorsement of legislation eliminating such discrimination would be a critical first step in overcoming this gender gap.

I noticed that yesterday, addressing the American Bar Association, the President credited his administration with individual retirement accounts, dependent care tax credits, pension right changes, and child support enforcement. All of that did not start at the White House; it all started right here in this committee, with a number of the Republican members of this committee who initiated it in 1981 in the first Economic Equity Act, which has since been reintroduced as S. 888.

Those of us who are the authors on the Senate side, most of them male, would be very encouraged if the administration—rather than

taking a look at pieces of the legislation and saying, "it's too costly to do this, that, or the other thing today, we'll leave that kind of equity for sometime in the future"—would endorse all of the concepts, if not all of the specifics, that are included in the Economic Equity Act.

I understand from the testimony we will have today, that a large part of title I of that act and comparable legislation, as it relates to pensions, will be endorsed by the administration and implicitly by the President—and for that, we obviously are grateful.

Today we are going to hear from Buck Chapoton and Mr. Clayton from the Department of Labor. And if we can go in that order, Buck, we can start with your testimony.

STATEMENT OF HON. JOHN E. CHAPOTON, ASSISTANT SECRETARY, TAX POLICY, DEPARTMENT OF THE TREASURY

Mr. CHAPOTON. Thank you, Mr. Chairman.

I am pleased to appear today on behalf of the administration to underline our continuing commitment to the distribution of fair and equal pension benefits to the working men and women of the country. The President affirmed his commitment to this principle last January in his state of the Union address, and I reaffirm that commitment today by pledging the administration's complete support of legislation amending ERISA and the Internal Revenue Code to eliminate biases against women both in earning their pension credits and in receiving retirement income as divorcees and widows.

The enactment of such legislation is a top administration priority. We support the entire thrust of S. 19. Likewise, we support the Supreme Court's Norris decision and applaud the catalytic effect it has had in focusing attention on corrective legislation.

With me today, Mr. Chairman, is Jeffrey Clayton, who is administrator of the pension and welfare benefits programs at the Department of Labor. Mr. Clayton and I have been participating along with other administration officials in an intensive review of the current pension laws to see how best to fulfill the President's state of the Union promise to bring equity to this area.

We have reviewed the pension provisions of S. 19, the Retirement Equity Act, and S. 888, the Economic Equity Act, and we support all of the provisions of S. 19, and most of the pension provisions of S. 888. In certain cases we are suggesting technical modifications. With the interest that this committee and its chairman have shown in achieving pension equity for women, I am confident that we will be able to work and accomplish this objective together.

Finally, before discussing the specific provisions of the bills before you, I would note that the administration applauds the Supreme Court's recent decision in the *Norris* case as a significant step toward greater equity for women in the pension area. We have been studying the decision and its ramifications to determine what additional initiatives in this area may now be appropriate. We are not prepared at this time to present any of our conclusions from our review of *Norris*, and thus my remarks will be confined to the pension provisions of S. 19 and S. 888. And I will summarize our statement, Mr. Chairman.

The first provisions we deal with are those relating to minimum participation and vesting on qualified pension plans. Under existing law,

a qualified plan may not require an employee to obtain an age greater than 25 as a condition to becoming a participant in the plan. Also, in determining an employee's years of service to see if the employee's benefits are nonforfeitable—that is, are vested—a plan generally may disregard years of service before an employee has attained age 22.

With respect to the participation requirement, both S. 888 and S. 19 would drop the required age from 25 to 21. This would be particularly beneficial to women. The highest labor force participation rate among age groups of women is for women in their early twenties; approximately 70 percent of the women in that age group are employed. Therefore, the administration strongly supports this change.

With respect to vesting, S. 888 but not S. 19 drops the age 22 by 1 year to 21. That would be the starting age at which years of service must be counted. The administration supports this provision of S. 888. It would reward participants who have been working for an employer at age 21 or earlier and remain with the employer for a significant period of time without imposing significant and unjustified record-keeping or financial cost on employers.

With respect to the maternity and paternity leave provisions of these bills and of existing law, the current rule is that a plan needs to calculate an employee's years of service for at least three purposes: First, his right to participate in the plan; second, vesting; and third, determining the employee's accrued benefits under the plans.

Under present law, no credit need be given for periods during which an employee is considered to have incurred a 1-year break in service, and in some situations an employee who incurs a break in service may be denied credit for years of service before the break for purposes of determining eligibility to be a plan participant or the portion of his benefits which he has vested. The existing rules do not require a plan to give an employee credit for any period during which an employee is on unpaid maternity or paternity leave.

S. 19 would require plans to credit hours of service to an individual who is absent from work on account of maternity or paternity leave without regard to whether the individual is paid, for purposes of determining if a break in service has occurred under the participation rules.

S. 888 would make more significant changes. It would require that an individual on approved maternity or paternity leave be credited for all purposes with 20 hours of service for each week of such leave up to 52 weeks, provided the individual returns to work for the employer at the end of the leave, or at least offers to do so. Thus, the credited hours would apply not only for purposes of determining whether a break in service has occurred, but also for determining whether the individual is credited for a full year of service for participation, vesting, and benefit accrual purposes.

We believe that the qualified plan rules should not impose unduly adverse consequences when an individual has a child or cares for a child for a reasonable period after the child's birth. And because this rationale applies for purposes of determining both whether a break in service has occurred and for vesting purposes, we support the intent of the maternity and paternity leave provisions of S. 19, and we recommend that S. 19 be applied not only to the participation rules but to the vesting rules as well.

Turning to the anti-assignment rule and family support obligations, under current law the general rule is that benefits under a qualified plan may not be assigned or alientated, either voluntarily or involuntarily. This rule generally preempts State law.

This causes several problems, one of which is that it's unclear whether it applies to assignments to meet family support obligations such as alimony and child support.

Both of the bills before you would make it clear that an assignment of qualified plan benefits is permitted in the case of judgments, decrees, and orders relating to child support, alimony payments, or marital property rights pursuant to State law. We support these clarifying changes.

The qualified divorce distribution provisions of S. 19 would enact rules to prevent a plan from treating qualified divorce distributions in a manner that is inconsistent with its treatment of distributions to the plan participants. For these purposes, a "qualified divorce distribution would be a distribution to a participant's former spouse pursuant to a court order.

S. 19 would require a plan that provides benefits in the form of annuity to make a single life annuity available to the former spouse. For example, where a divorce court has awarded a woman an interest in her ex-husband's plan benefit, the plan would be required to make a single life annuity available to her if the plan had an annuity option for its participants. The plan could make a qualified divorce distribution in the plan of a total distribution within a single year, however.

We support these changes. We believe that they will provide both former spouses and plans with assurances about how divorce distributions will be made, without a significant burden on the plans. We do have some technical concerns about the specifics of this provision that are outlined in my written statement, but I won't cover them here, Mr. Chairman.

S. 19 also contains certain rules clarifying the tax treatment of qualified distributions to the spouse. One of hte provisions is that qualified divorce distributions may not be treated as lump sum distributions, and thus may not qualify for capital gain treatment or special 10-year averaging. S. 19 would permit a former spouse to roll such a distribution over into an IRA without tax, in order to avoid a bunching of income in one year, but we question whether the general rules for lump-sum treatment should be denied to an ex-spouse of a plan participant, given the fact that it is available to the plan participant.

TURNING TO SURVIVOR ANNUITIES

Under current law, a qualified plan that offers an annuity as a normal form of benefit distribution must pay a married participant who has either retired or attained the normal retirement age—typically 65—his or her benefit in the form of a qualified joint and survivor annuity unless the participant affirmatively elects the benefit in another form.

A plan need not make available a joint and survivor benefit until the participant has attained the later of the earliest retirement age—which is typically 55—or the day that is ten years before the participant attains normal retirement age.

Existing law also provides that even though a married participant has elected to receive retirement benefits in the form of a joint and survivor annuity, a plan need not pay the survivor portion of the annuity to the individual who was the participant's spouse when the payments began if that individual is not the participant's spouse at the time of the participant's death.

The administration believes that participants' spouses should be given additional protection under qualified plans. Both of these bills would provide additional protection by requiring that, where the normal form of benefit is a joint and survivor annuity, an election by a participant not to take this form of benefit is not effective unless the spouse has consented. The administration supports granting participants' spouses this right as an appropriate safeguard to enable spouses to protect their interests. In this regard, however, we would like to work with the committee in developing safeguards that would also provide some protection to plan fiduciaries who rely on a notarized consent.

We also support the provisions of S. 19 and S. 888 that would require a plan to treat an individual who was a participant's spouse when joint and survivor annuity payments began, but not at the participant's death, as though the individual remained the participant's spouse at death.

In addition, we support the provision of S. 19 that would reverse the *BBS Associates* decision regarding joint and survivor annuities. In earlier Treasury regulations we had adopted the requirement that, if a plan offers annuity benefits, it must pay a married participant his or her retirement benefit in the form of a joint and survivor annuity unless the participant elects otherwise. The Tax Court and Third Circuit held that regulation was invalid, but we continue to believe that this is correct.

Finally, the administration does not support the early-death survivor annuity requirement contained in S. 888. We are not convinced that an early death survivor annuity, which would not be payable until retirement benefits first would have been available to the participant, would provide a significant benefit to a surviving spouse at such time. In many cases, the needs of a surviving spouse upon the participant's death would be better satisfied by life insurance, and we are concerned about the possible negative effects on life insurance protection provided by employers that might result from such a change.

We are also concerned that any added cost of a mandated early-death survivor annuity may encourage some plans to stop offering annuities and instead to offer only lump-sum and installment or term certain payments. In our view, this would have a significant adverse effect on both men and women participating in the private pension system, which is primarily intended to provide retirement benefits for life.

We do believe, however, that surviving spouses require additional protection under qualified plans. And thus, we propose that a qualified plan be required to provide a married participant with a joint and survivor benefits beginning at the later of the plan's earliest retirement age and the date 10 years before the participant attains normal retirement age, unless the participant elects not to be provided with a joint and survivor benefit. Under current law, the survivor benefit becomes

a presumed form of benefit only when the participant retires or attains normal retirement age. Our proposed rule would give the spouse's required consent to a participant's election out of the joint and survivor benefit more meaning, and accordingly would give spouses greater security with respect to their retirement income.

Mr. Chairman, I think that summarizes my statement. As you pointed out at the outset, we are supportive of both of these bills—all of S. 19, and, with a couple of qualifications, all the pension provisions of S. 888.

Mr. Clayton and I will be happy to answer any questions you might have, Mr. Chairman.

[The prepared statement of Hon. John E. Chapoton follows:]

For Release Upon Delivery
Expected at 2:00 p.m. EDT
August 2, 1983

STATEMENT OF
THE HONORABLE JOHN E. CHAPOTON
ASSISTANT SECRETARY (TAX POLICY)
DEPARTMENT OF THE TREASURY
BEFORE THE SENATE COMMITTEE ON FINANCE

Mr. Chairman and Members of the Committee:

I am pleased to appear today on behalf of the Administration to underline our continuing commitment to the distribution of fair and equal pension benefits to the working men and women of this country. The President affirmed his commitment to this principle last January in his State of the Union address, and I reaffirm that commitment today by pledging the Administration's complete support of legislation amending the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code to eliminate biases against women both in earning their own pension credits and in receiving retirement income as divorcees and widows. The enactment of such legislation is a top Administration priority. We support the entire thrust of S. 19. Likewise, we support the Supreme Court's Norris decision and applaud the catalytic effect it has had in focusing attention on corrective legislation.

With me today is Jeffrey Clayton, Administrator of Pension and Welfare Benefit Programs at the Department of Labor. We have been participating, with other Administration officials, in an intensive review of current pension laws to see how best to fulfill the President's State of the Union promise to bring equity to this area.

R-2265

We have reviewed the pension provisions of S. 19, the Retirement Equity Act, and S. 888, the Economic Equity Act, and we support most of them. In certain cases, we believe that technical changes are necessary to assure that we aid the maximum number of women and that the administrative burden on pension plans is minimized. With the interest that you, Mr. Chairman, and other members of this Committee have shown in achieving pension equity for women, I am confident that we will be able to work and accomplish this objective together.

Finally, before discussing the specific provisions of the bills before you, I would note that the Administration applauds the Supreme Court's recent decision in the Norris case as a significant step toward greater equity for women in the pension area. Since the Norris case was decided, we have been studying the decision and its ramifications to determine what additional initiatives in this area now may be appropriate. We are not prepared at this time to present any conclusions from our review of Norris, and thus my remarks will be confined to the pension provisions of S. 19 and S. 888.

Minimum Participation and Vesting Rules

Under existing law, a qualified plan may not require an employee to attain an age greater than 25 as a condition of becoming a participant in the plan. The current rules also require a plan to meet one of three alternative minimum vesting schedules. Under these schedules, an employee's right to benefits attributable to employer contributions must become nonforfeitable (i.e., must vest) at varying rates depending on the employee's years of service with the employer. In determining an employee's years of service, a plan generally may disregard years of service before an employee has attained age 22.

Both S. 888 and S. 19 would provide that a plan may not require an employee to attain an age greater than 21, instead of 25, as a condition of participation. We believe that this reduction would remove a significant legal obstacle to the accrual of benefits for some individuals between the ages of 21 and 25 and would be particularly beneficial to women between these ages. The highest labor force participation rate among age groups of women is for women in their early twenties (approximately 70 percent). The Administration believes that women should not be denied the opportunity to participate in plans during the years they are most likely to be employed.

Also, S. 888, but not S. 19, would require a plan to begin counting, for purposes of determining the portion of an employee's plan benefits that are vested, years of service after the employee has attained age 21, instead of the age 22.

The Administration supports this provision of S. 888. It would reward participants who begin working for an employer at age 21 or earlier and remain with the employer for a significant period of time, without imposing significant and unjustified recordkeeping or financial costs on employers. In addition, this reduction for vesting purposes would be wholly consistent with the age reduction for participation purposes.

Maternity and Paternity Leave

Under present law, a plan may need to calculate an employee's years of service to determine (i) whether the employee should be permitted to participate in the plan, (ii) the extent to which the employee's benefits have vested, and (iii) the employee's accrued benefit.

The term "year of service" generally means a year during which the employee has worked at least 1,000 hours. In general, all of an employee's years of service with the employer are to be taken into account. No credit need be given, however, for periods during which an employee is considered to have incurred a one-year break in service. In addition, there are situations in which an employee who incurs a break in service may be denied credit for years of service before the break for purposes of determining whether the employee is eligible to be a plan participant or the portion of plan benefits that have vested. A one-year break in service may be defined as a year during which the employee does not complete at least 500 hours of service.

The existing service-counting rules do not require a plan to give an employee credit for any period during which an employee is on unpaid maternity or paternity leave. The rules provide, however, that if an employee is on paid maternity or paternity leave, the plan must credit the employee with the paid hours (even though no duties were performed) up to 501 hours. Assuming that the employee returns to work at the end of 12 months of paid leave, these hours will prevent an employee from incurring a one-year break in service that might otherwise have resulted from the 12-month absence. In comparison, an employee on unpaid leave for 12 months may well incur a one-year break in service as a result.

S. 19 would require plans to credit hours of service to an individual who is absent from work on account of maternity or paternity leave without regard to whether the individual is paid during such leave. These hours would be credited solely to determine if a break in service has occurred for purposes of the participation rules. The number of hours that would be required to be credited to an individual is limited to 501 hours, which is sufficient to assure that if an individual returns to work after a 12-month leave, the individual will not have incurred a one-year break in service on account of the leave. The particular time by which an individual would have to return to work after a leave in order to avoid a one-year break in service would depend upon when during the year the leave commenced. Generally, the effect of the rule in S. 19 would be that individuals would be able to take between 12 and 21 months of leave before having to return to work.

S. 888 would make more significant changes in the treatment of maternity and paternity leave. It would require that an individual on approved maternity or paternity leave be credited, for all purposes, with 20 hours of service for each week of such leave up to 52 weeks, regardless of whether he or she is paid for the leave. S. 888 requires that an individual, to be credited with such service, return to work for the employer at the end of the leave, or at least offer to do so. Under S. 888, the credited hours would apply not only for purposes of determining whether an individual has incurred a one-year break in service on account of a leave, but also for purposes of determining whether the individual should be credited with a full year of service for participation and vesting purposes and a partial or full year for benefit accrual purposes.

The Administration believes the qualified plan rules should not impose unduly adverse consequences when an individual has a child or cares for a child for a reasonable period after the child's birth. Because this rationale applies for purposes of determining whether a one-year break in service has occurred for both participation and vesting purposes, the Administration supports the intent of the maternity and paternity leave provisions of S. 19 and recommends that they be extended so that the credited hours would be applied also to prevent a one-year break in service under the vesting rules.

The Anti-Assignment Rule and Family Support Obligations

Under current law, benefits under a qualified plan generally may not be assigned or alienated, either voluntarily or involuntarily. This rule generally preempts State laws that otherwise would permit an alienation or assignment of such benefits.

Several questions have arisen concerning the scope of this preemption. First, it is unclear whether it applies to assignments to satisfy family support obligations, such as alimony and child support. State courts have held and the IRS has ruled that Congress did not intend to preempt State law on these matters. Second, there is a divergence of opinion about whether ERISA preempts State community property laws with respect to ownership of the benefits accrued under a qualified plan.

Both S. 888 and S. 19 would modify the prohibition against the assignment or alienation of benefits in a qualified plan to make it clear that an assignment of qualified plan benefits is permitted in the case of certain judgments, decrees, or orders relating to child support, alimony payments, or marital property rights pursuant to a State domestic relations law.

The modification would apply only with respect to judgments, decrees, or orders that (i) clearly identify the participant, the amount or percentage of the benefits to be paid to the individual, the number of payments to which the judgment applies, and the name and mailing address of the individual, and (ii) do not require the plan to alter the effective date, timing, form, duration, or amount of any benefit payments under the plan or to honor any election that is made by a person other than a participant or beneficiary.

The Administration strongly supports these provisions of S. 19 and S. 888. Although an implied exception to the anti-assignment rules for court-sanctioned family support obligations generally has been recognized by State courts and the IRS, a statutory amendment would confirm the exception.

In addition, these provisions would define the scope of the exception and reduce the associated legal and administrative costs presently being incurred by plans. Qualified plans increasingly are becoming involved in family disputes. The trustees of many plans fear that the ERISA fiduciary rules require that they challenge attempts to assign plan benefits. In some situations, court orders appear to violate the terms of the plan, and the trustees of

the plan, if they fail to appear in court to represent the plan's interests, may later be put in a situation of having to pay the same benefits twice (once to the assignee and again to the participant).

These provisions of S. 19 and S. 888 represent a fair balancing of the various interests that would be affected by the assignment of qualified plan benefits in connection with court-sanctioned family support obligations. Because they would require that the order clearly state the manner in which the benefits are to be paid to the divorced spouse or children and that plans may only pay such benefits in accordance with their own rules, these provisions should promote the efficient administration of qualified plans to the benefit of all interested parties. Nevertheless, we would like to work with the Committee and its staff in developing certain safeguards that would protect plans that make such court-ordered distributions.

Qualified Divorce Distributions

S. 19 would enact rules to prevent a plan from treating "qualified divorce distributions" in a manner that is inconsistent with its treatment of distributions to plan participants. A "qualified divorce distribution" would be a distribution to a participant's former spouse made pursuant to a court order that comes within the proposed exception to the anti-assignment rule.

In particular, S. 19 would require a plan that provides benefits in the form of an annuity to make a single life annuity available to the former spouse. For example, where a divorce court has awarded a woman an interest in her ex-husband's plan benefit, the plan would be required to make a single life annuity available to the woman if the plan had an annuity option for participants. S. 19 also would provide, however, that a plan may require and make a qualified divorce distribution in the form of a total distribution within a single year. Finally, S. 19 would require a plan to make a qualified divorce distribution available to a former spouse by the year in which benefits would have been available to the participant with respect to whom the distribution relates. We interpret the effect of this to be that, at the time benefits would have been available to the participant, the former spouse's interest in the participant's benefit is no longer contingent on the actions or status of the participant.

The Administration believes that these provisions will provide both former spouses and plans with certain assurances about how qualified divorce distributions will be made, without imposing a significant burden on the plans. For these reasons, the Administration supports the intent of these provisions.

We are concerned, however, that the rules in S. 19 governing qualified divorce distributions do not adequately express either a plan's obligations or a former spouse's rights with respect to such distributions. For example, the rules are not clear about the extent to which plans must treat former spouses as participants and thus provide them with the options available to participants. Also, we are concerned that the rules in S. 19 require plans to treat former spouses' interests in ways that may not be mandated by the applicable court orders. The Administration believes that the rules should merely limit what a court order may require a plan to do, and that the court order should prescribe the particular fashion in which a former spouse's interest is to be treated within such limits. Accordingly, we would like to work with the Committee and its staff in clarifying these and related matters.

S. 19 also contains certain rules clarifying the tax treatment of qualified divorce distributions. In particular, S. 19 provides that the plan participant's "investment in the contract" shall be allocated, between the former spouse and the participant, on a pro rata basis between the qualified divorce distribution and the participant's other benefits under the plan. With certain clarifications, the Administration supports this rule. In addition, S. 19 provides that a qualified divorce distribution may not be treated as a lump sum distribution and thus may not qualify for capital gains treatment or special ten-year averaging. Although S. 19 would permit a former spouse to "roll over" a total distribution into an IRA without tax in order to avoid an excessive bunching of income, we question whether the general rules for lump sum treatment should be denied in this instance.

Survivor Annuities

Under current law, a qualified plan that offers an annuity as the normal form of benefit distribution (generally, a defined benefit plan) must pay a married participant who has either retired or attained the normal retirement age (typically, age 65) his or her benefits in the form of a qualified joint and survivor annuity unless the participant affirmatively elects payment in another form.

Under present law, a plan need not make available a joint and survivor benefit until the participant has attained the later of the earliest retirement age (typically, age 55) or the day that is ten years before the participant attains the normal retirement age. Such a plan must, however, allow a married participant to elect a joint and survivor annuity during the period between the date when the participant attains the later of these two dates and the date the participant retires or attains normal retirement age.

Finally, a plan generally may provide that any election to receive a joint and survivor annuity will not be effective if the participant dies, from non-accidental causes, within two years after making the election. Existing law also provides that even though a married participant has elected to receive retirement benefits in the form of a joint and survivor annuity, a plan need not pay the survivor portion of the annuity to the individual who was the participant's spouse when the payments began if the individual is not the participant's spouse at the time of the participant's death.

S. 888 would change, on a prospective basis, the existing rules relating to the provision of joint and survivor benefits. In particular, S. 888 would create four new joint and survivor benefit provisions.

First, a plan that provides that the normal form of benefit is an annuity would be required to provide a survivor retirement benefit for a participant's surviving spouse if the participant, with ten or more years of service, dies before receiving any annuity benefits. This would have the effect of extending the presumption in favor of a joint and survivor annuity, which currently exists for married participants upon retirement or the attainment of normal retirement age, to all married participants with ten or more years of service.

Second, S. 888 would require a plan to treat an individual who was the spouse of a participant when joint and survivor annuity payments were first paid to the participant as though such individual were still the participant's spouse on the date of the participant's death, even though they had been divorced. Accordingly, the plan would be required to pay the survivor annuity to such individual.

Third, S. 888 would eliminate the rule permitting a plan to disregard an election to receive a joint and survivor benefit if the participant dies, from non-accidental causes, within two years of the election.

Fourth, S. 888 would provide that an election by a participant not to receive a joint and survivor annuity is not effective unless the spouse consents to the election. Because S. 888 also would extend the rule that a plan must give each married participant a reasonable opportunity to elect not to take a joint and survivor annuity so that it applies as well to the proposed survivor benefit for participants with ten or more years of service, the spousal consent requirement would be of extensive significance.

S. 19 also would modify the existing joint and survivor annuity rules. First, it is our understanding that S. 19 would reimpose the qualification requirement, declared invalid in BBS Associates, Inc. v. Commissioner, 74 T.C. 1118 (1980), aff'd 661 F.2d 913 (3d Cir. 1981), that if a plan offers an annuity as a form of benefit distribution, the plan must distribute benefits to married participants in the joint and survivor form unless they elect another form.

Second, S. 19 would provide (like S. 888) that a married participant's election not to receive a joint and survivor annuity is not effective without the written and notarized consent of the participant's spouse. Finally, like S. 888, S. 19 would provide that if a participant was married at the time that joint and survivor payments began, the survivor annuity must be paid to the individual who was married to the participant at such time, even though they had been divorced before the participant's death.

The Administration believes that participants' spouses should be given additional protection under qualified plans. Both S. 19 and S. 888 would provide additional protection to such spouses by requiring that, where the normal form of benefit is a joint and survivor annuity benefit, an election by a participant not to take this form of benefit is not effective unless the spouse has consented. The Administration supports granting participants' spouses this right as an appropriate safeguard to enable spouses to protect their interests. In this regard, however, we would like to work with the Committee and its staff in developing safeguards that also would provide some protection to plan fiduciaries who rely on a notarized consent.

The Administration also supports the provisions of S. 19 and S. 888 that would require a plan (i) to treat an individual who was a participant's spouse when joint and survivor annuity payments began, but not at the participant's death, as though such individual remained the participant's spouse at death, and (ii) to recognize a participant's election to receive a joint and survivor annuity without

regard to whether or why the participant dies within two years of the election.

In addition, the Administration supports the provision of S. 19 that would reverse the BBS Associates decision regarding joint and survivor annuities. In Treasury regulations, we had adopted the requirement that if a plan offers annuity benefits, it must pay a married participant his or her retirement benefit in the form of a joint and survivor annuity unless the participant elects otherwise. We believed then and continue to believe that this rule in favor of joint and survivor benefits is proper.

Finally, the Administration does not support the "early death" survivor annuity requirement contained in S. 888. We are not convinced that an "early death" survivor annuity, which would not be payable until retirement benefits first would have been available to the participant, would provide a significant benefit to a surviving spouse at such time. In many cases, the needs of a surviving spouse upon a participant's death would be better satisfied by life insurance. In this regard, we are concerned about the possible negative effects on life insurance protection that might result from such a change. We also are concerned that any added cost of a mandated "early death" survivor annuity may encourage some plans to stop offering annuities and, instead, to offer only lump sum and installment or term certain payments. In our view, this would have a significant adverse effect on both men and women participating in the private pension system, which primarily is intended to provide retirement benefits for life.

The Administration does believe, however, that surviving spouses require additional protection under qualified plans, particularly as participants and spouses approach retirement. Thus, we propose that a qualified plan be required to provide a married participant with a joint and survivor benefit beginning at the later of the plan's earliest retirement age and the date ten years before the participant attains the normal retirement age, unless the participant elects to receive the benefit in another form. Under current law, a plan need only make available a joint and survivor benefit as of this time, and the joint and survivor benefit becomes the presumed form of benefit only when the participant retires or attains the normal retirement age. This proposed rule also would give the spouse's required consent to a participant's election out of the joint and survivor benefit more meaningful effect and, accordingly, would give spouses greater security with respect to their projected retirement income.

Notification of Forfeitability

Under current law, a plan must provide a participant who so requests with a statement that contains information about the participant's total accrued benefits and the portion of such benefits that is vested. S. 19 would require that such a statement also inform a participant about the portion of his or her benefits that is forfeitable if the participant dies before a certain date. The Administration supports the intent of this provision of S. 19.

Allowable Mandatory Distributions

Under existing law, a plan may provide for a mandatory payment to a participant of the participant's vested accrued benefit in a lump sum upon the termination of the participant's participation in the plan if the amount to be distributed is not greater than $1,750.

The existing rule is one of convenience for plans. On a percentage basis, the administrative costs of making annuity or installment payments of very small amounts are far greater than the costs associated with a lump sum payment. Any possible detriment to employees caused by this rule is mitigated by the participant's ability to roll over the lump sum payment into an IRA without tax consequences, and then receive the retirement benefits over time.

S. 19 would double the amount that a plan may involuntarily pay out in a lump sum from $1,750 to $3,500. The Administration supports this provision of S. 19 because it would reduce an administrative burden that has heretofore been shouldered by plans.

CONCLUSION

Mr. Chairman, the Administration remains strongly committed to working toward greater pension equity for women and we commend you and this Committee for the time and effort that you have expended toward accomplishing this goal. We look forward to working with you on this important task. Legislation not only is proper, but should be enacted as quickly as possible. This would aid women and assist employers and plan administrators in coordinating the changes required by pension equity legislation with the changes now being made to plans to comply with the Tax Equity and Fiscal Responsibility Act.

This concludes my prepared remarks. We would be happy to answer any questions that the Committee might have.

Senator DURENBERGER. I would be happy to ask some questions, but I only have 10 minutes for the final passage of the railroad retirement bill.

I am not sure how to handle this, because it is not clear in my mind whether my other colleagues who might be over there on the railroad retirement bill might want to come back.

Mr. CHAPOTON. We would be happy to stand by.

Senator DURENBERGER. If you have the time to wait perhaps 10 minutes, there might be others that have questions.

I think it is an outstanding statement, and I think it reflects the fact that those of you who have had the responsibility for looking at the pension side of this have put a great deal of thought and effort not only in this legislation but in trying to examine alternatives where you might improve the existing legislation.

Obviously, as I read and listen to your testimony, there are some small areas of disagreement which might be just matters of judgment based on some of the testimony that we heard earlier. But I think it is going to be an extremely helpful statement, and I just trust what when we get back from this recess that we on the committee, with your help, can put our minds to finalize this legislatively.

There is one thing I might just ask you, without getting the answer for it necessarily: Has some of this been analyzed for costs? Do we have the Treasury analysis?

Mr. CHAPOTON. I believe it is correct to say all of the cost to employers for each of these provisions has been examined. Yes, sir.

Senator DURENBERGER. All right.

Well then, if you don't mind, we are going to recess the hearing for 5 or 10 minutes.

Mr. CHAPOTON. That's fine.

Senator DURENBERGER. Thank you very much.

[Whereupon, at 3:04 p.m., the hearing was recessed.]

AFTER RECESS

Senator PACKWOOD. The hearing will come back to order.

Mr. Secretary, I have just had a chance to review your testimony now, and I know you have testified, but let me go through your written testimony and make sure I understand where you are.

You would reduce from 25 to 21 the eligibility for the start of the vesting of pensions? For participation?

Mr. CHAPOTON. For participation, yes, sir.

Senator PACKWOOD. All right.

You would allow the 1-year break in service for maternity or paternity leave without loss of seniority on pensions.

Mr. CHAPOTON. And without loss of vesting, too. We would add to that.

Senator PACKWOOD. And you would allow the divorce judge to assign pension rights in a divorce settlement?

Mr. CHAPOTON. That is correct. It would clarify existing law.

Senator PACKWOOD. And you would allow a survivor to take pension rights if the election to include the survivor was made within 2 years of death. You would no longer have the contemplation-of-death presumption we now have?

Mr. CHAPOTON. That is correct.

Senator PACKWOOD. However, you are opposed to allowing a survivor to receive any pension rights of the employee if the employee dies before the period when the employee would be eligible for the pension. Is that correct?

Mr. CHAPOTON. That's right. Before early retirement or 10 years within retirement.

Senator PACKWOOD. What is the reason for that?

Mr. CHAPOTON. Well, see, right away that is a close question. The rationale is that when you are talking about an earlier death, you are really then dealing with insurance benefits, a death benefit, in effect, and if you provide that additional death benefit it will be more expensive to the plans. As a result, you may discourage employers from otherwise providing insurance or from providing an annuity as a form of payment of the plan. They may simply go to lump sum or to installment payout of plan benefits, and we think both of those would be undesirable. Anuuity benefits would be the most desirable.

But I guess the most important question would be whether the benefit, before you reach an older age, is a meaningful benefit. It becomes more meaningful when the plan participant is more elderly and has been with the plan longer.

Senator PACKWOOD. Buck, in your statement you say you support the *Norris* case in its totality?

Mr. CHAPOTON. That is correct.

Senator PACKWOOD. Now, there are two things there I want to ask you.

The *Norris* case applied only, of course, to employment, not to individual policies. And it also was not retroactive.

Mr. CHAPOTON. That's correct.

Senator PACKWOOD. Would you support the concept of the *Norris* case if it was not retroactive, but it would apply to individual policies?

Mr. CHAPOTON. Mr. Clayton is with the Labor Department. Let me have him address that, if he might.

Mr. CLAYTON. The administration has been carefully reviewing *Norris*—number one, what it says, what it doesn't say, and how it ought to be implemented in the various options.

With respect to its application to an insurance policy or logical extensions of Norris in the pension area——

Senator PACKWOOD. I'm sorry. I can't hear you. Could you pull that right up and speak right into it?

Mr. CLAYTON. With respect to issues that deal with *Norris* as it might apply to insurance, insurance policies, or logical extensions of *Norris* in the pension area, they are still under consideration with the administration, and we are not really in a position to give any definitive answer.

Senator PACKWOOD. Well, I take it the administration's position hasn't changed from that that it had, then, before *Norris*.

Mr. CLAYTON. Well, I don't think the administration has a position, in a sense, other than that it is fully in support of *Norris*, and those issues that *Norris* has raised are now actively—very actively—under consideration.

Senator PACKWOOD. Well, all right. Let me rephrase it.

Those of us who were active in attempting to eliminate sex discrimination in insurance presumed, even when we introduced our bill, that *Norris* was going to come out the way it did, and it would cover employment. So the question became: What about the insurance that is unrelated to employment?—which *Norris* doesn't cover. *Norris* covers only employment. The administration had no position on those insurance policies prior to *Norris*. I take it it still has no position.

Mr. CLAYTON. That's right, but it is actively considering that type of issue right now.

Senator PACKWOOD. When do you think the administration might have a position? It has been 6 or 7 months since we have asked them for a position on that issue.

Mr. CLAYTON. Well, *Norris* was decided——

Senator PACKWOOD. No, I mean absent *Norris*. They had no position after *Norris*, and *Norris* didn't affect the administration's no position.

Mr. CLAYTON. What *Norris* has done, in reality, has brought people's minds to focus on those very issues, and it has really only been since *Norris* that those issues have been intensively reviewed. And I would expect that the administration will have resolved its position in the not too distant future.

Senator PACKWOOD. All right.

Buck, what about dependent care? Your statement doesn't touch upon it.

Mr. CHAPOTON. The statement doesn't touch on it, Mr. Chairman. It has been under review and is still currently under review. I am not in a position to advise you whether we support the provisions of S. 888 which would extend dependent care.

I would point out there was a significant extension of dependent care provisions in ERTA in 1981, and we are examining where the benefits of the extension would fall and whether they are worthwhile.

Senator PACKWOOD. I recall those extensions came over the adamant opposition of the administration, however.

Mr. CHAPOTON. They were enacted, though, Mr. Chairman, and they did provide additional benefits. Frankly, I think they have not been advertised widely enough. I think a lot of people are not aware of the fact that they were significantly extended.

Senator PACKWOOD. I understand that they were enacted; I guess what I object to is the administration from time to time saying that they were administration-inspired dependent credits. The history of that is: The administration's tax bill had passed the House; Congressman Conable wanted to put in the daycare credits; the administration said they would not accept them; the bill passed. He called me and said if we would put them in the Senate, he thought the House would accept them. We had to fight tooth and toenail against the administration to get them in in the Senate; we got them in over vehement objection of the administration; they were adopted; and then the administration claimed them as their credits. I did think that was stretching the use of the word "administration-inspired" credits a bit.

Mr. CHAPOTON. Well, maybe we have seen the light, Mr. Chairman.

Senator PACKWOOD. OK.

I would hope, Buck, on almost all of these that do not involve the expenditure, very significant expenditure, of Federal money—an

asterisk, if you want to call it that, in our budget process—that the administration would be willing to tilt on the side of women in these issues.

You know I've gone around and around with the administration on women's issues. I understand on some they are not going to change their philosophical position at all, but there are numerous positions that they could take, and one of them is in the insurance field, in the pension field, which will cost the administration nothing and which would do a great deal for women in this country.

Daycare? I am fully aware it is an item of cost to the Treasury—dependent care we should call it; it is not limited to children. If you've got your dependent parent living with you, that counts also. And I realize it's expensive, but I think it is some of the most humanitarian money that we spend.

Mr. CHAPOTON. I think, too, Mr. Chairman, and I know you are aware of this, that to give the additional benefit after 1981, however that came about, you would have to make the credit refundable. I believe it is refundable in S. 888.

Senator PACKWOOD. No; it wasn't. That's one of the things we had to give up.

Mr. CHAPOTON. No; in the bill before you I believe it is refundable.

Senator PACKWOOD. Yes.

Mr. CHAPOTON. And as you know, we have had some concern about refundability of such items; but without refundability I have to say that it doesn't really get the benefit where it seeks to bestow the benefit.

Senator PACKWOOD. Well, with this exception: Although it is a provision that is now beyond the Government, I think the provision we put in in 1981 that made the daycare a tax-free fringe benefit has the potential, given a number of years at least, for those who are employed to become as a significant a benefit as health insurance.

Mr. CHAPOTON. It's a complement to this. Yes; I see that.

Senator PACKWOOD. And as I say, that is one that, as it expands, will clearly cost the Treasury money. I think it is a good expense, but at this stage there is not much the Government can do. It is going to be a matter of collective bargaining or employee-employer desires, or however they choose to work it out.

Mr. CHAPOTON. That is correct.

In response to your general comment a minute ago, I think as you review these provisions, we have come down on the side you suggest in the provisions——

Senator PACKWOOD. Yes; I give the administration credit on all of these. You picked out a fair portion of the Economic Equity Act in some of those, and I'm delighted to see the administration come in that direction. And I congratulate you. I know it was through your firm arguing that they came there.

Mr. CHAPOTON. Well, I might comment that, when you look at it, it does seem to me the law developed in a way that was, if you will, irrational on these items, that they are discriminatory and they are biased, and I think it is correct that they be removed.

Senator PACKWOOD. It is a bias, by and large. You know, whatever arguments may have been made for the bias 5 or 10 or 20 years ago, that they have any kind of justification for that bias is gone. And again, I congratulate the administration.

I have no more questions right now, but I think you had better wait because I saw Bob Dole on the floor, and he and several others thought they might have some questions when they get back.

Mr. CHAPOTON. All right, fine.

Senator PACKWOOD. We will just adjourn the hearing until any other member comes and wants to ask questions. [Laughter.]

[Whereupon, at 3:25 p.m., the hearing was recessed.]

AFTER RECESS

The CHAIRMAN. I have a statement which I ask be made a part of the record. We have just passed the railroad retirement bill, and I will conclude the hearing.

As I understand your statement, you did endorse certain provisions pertaining to S. 19 and S. 888. Is that correct?

Mr. CHAPOTON. That's correct, all of the povisions of S. 19, with some technical suggestions, and most of S. 888.

The CHAIRMAN. Do you believe that employers will reduce the amount of life insurance they currently provide employees if we require joint and survivor coverage after 10 years of service? That's one question that I have.

Mr. CHAPOTON. Mr. Chairman, I think that that's a possibility. I think what we are talking about is in some sense a substitute for life insurance, and we know that there is additional cost; so employers might have some incentive to reduce life insurance if early death survivor annuities were mandated at that early age.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Buck, we had testimony in hearings on the Economic Equity Act on that subject from a number of women whose husbands had died at 52 or 53, or 54, and in one case one who was going to die of a terminal illness before reaching the minimum retirement age. And in every case the insurance they would get, prorated over that would be the rest of their life, wasn't a fraction of what their pension benefits would have been had they vested. It is not a tradeoff. But these women it clearly wasn't, and we didn't have any evidence that it became a tradeoff.

Mr. CHAPOTON. In some cases, though, Senator Packwood, and as I said earlier, this is a close question. What you are talking about are benefits that if the employee had lived, he or his survivors would have received them. So you can easily see the argument for providing survivor benefits.

The other side is that they are expensive. There is some cost, and there will be a tradeoff in the system somewhere. The benefit plans are provided primarily, and the purpose of them is, to provide retirement benefits, and that nominally is benefits for the employee participant if he lives until retirement.

The CHAIRMAN. Mr. Chapoton, could you explain simply, so I can understand it, why it is important that a joint and survivor annuity option be available whenever a life annuity is available?

Mr. CHAPOTON. I think, Mr. Chairman, that's quite important, that if you have spouses—husband and wife, one of whom is a participant in a plan—and the annuity option is available, then without a joint

and survivor annuity option the nonparticipant spouse can easily be left out in the cold, even though that occurs very late in the employment relationship or right at termination of employment. So it seems to be the only equitable thing to do. Otherwise, you have the participant get an annuity and it terminates at his death. That seems patently unfair.

The CHAIRMAN. Well, could plan administrators avoid the joint and survivor requirement and still provide payouts in a form other than a lump sum by providing installment payments over a period of 10 to 20 years?

Mr. CHAPOTON. Yes; they could. And I think that might well be a matter of concern if one observed that taking place to any significant degree. Then you might consider whether you would want to mandate some type of annuity benefit.

It seems to us that the primary benefit under a retirement plan ought to be an annuity.

The CHAIRMAN. I have one additional question, and if Mr. Clayton has any comments he would like to make, I would be happy to have his comments.

We try in S. 19 to alleviate the problems of the reliance of employees and their spouses on pension benefits in a situation where there is no survivor benefit by requiring the plan to provide information to the employees and their spouses. In that way, families can protect themselves by purchasing life insurance when plan benefits are insufficient.

I guess our question is: Do you have any suggestions as to how employers can more effectively communicate this information?

Mr. CHAPOTON. I will let Mr. Clayton speak to that.

Mr. CLAYTON. Well, clearly that is information that any spouse ought to know about, and plan participants ought to understand that there is a possibility of a forfeiture of benefits along the way.

I think it ought to be under all circumstances included in the summary plan description, and perhaps included in that summary plan description in such a way that it is disclosed in a conspicuous manner.

With respect to other forms of getting that information to the participants, that's one of the considerations that we are looking at now as a result of this bill—that is, how is the best way to get that information to the participant?

The CHAIRMAN. I have maybe one additional question, which relates to S. 888 and not S. 19.

Suppose the committee insists on spousal consent to a waiver of joint and survivor benefits. Can you suggest any methods that might make consent less burdensome on the plan administrators and participants?

Mr. CLAYTON. I think, Mr. Chairman, with respect to the consent, we have had discussions with quite a few administration firms—plants, and so forth—and some have expressed a preference for in essence a safe harbor; that is, using a notarized form or something of that nature, which guarantees that there isn't going to be a challenge to the plan. And clearly, if you are going to use something like a notarized form, it ought to be clear that that will protect the plan administration, that they can rely on it.

On the other hand, there are other plans who have been suggesting that they ought to be able to use a more casual form of notice, and they are willing to take a risk that perhaps they may be challenged.

I think it would be easy to put in the bill a provision which allows a clear safe harbor, such as notarization or witnessing by an appropriate plan official; and in the alternative, perhaps another procedure which may not give the safe harbor protection, so that plans could adopt either way. That way they could either have the security or they could go a more casual route and take their chances, because we have heard both views expressed from the pension community.

The CHAIRMAN. Senator Chafee.

Senator CHAFEE. That last question you asked, Mr. Chairman, was that dealing with the written consent of the employee's spouse to elect not to have the joint and survivor annuity coverage? I thought that the administration agreed with that. Am I wrong?

Mr. CHAPOTON. No, we do support that provision, yes. We support the written consent. The chairman's question went to making that, and we suggested that you should look at easing an administrative burden caused by that requirement—easing the administrative burden to the plan administrator as a result of imposing a requirement that a written consent be obtained from the spouse to change the form of benefit.

Senator CHAFEE. You suggest that we ease the administrative burden, how?

Mr. CHAPOTON. No; the chairman's question said did we have any suggestions for easing the administrative burden.

Senator CHAFEE. Oh, I see. Yes.

Well, I don't know how you do it, but it seems to me that is a fairly common sense provision.

Mr. CHAPOTON. We certainly agree.

Senator CHAFEE. I don't have any more questions, but, Mr. Chairman, while we have Mr. Chapoton here, I want to ask him a question on a related subject. I don't want to hold up the hearing, but this isn't too unrelated. [Laughter.]

The IRA's which, as you know, we passed in 1981 and have been a great success. There has been some suggestion of enlarging them to, for instance, permit a nonworking spouse make a more substantial contribution. What is your reaction to that?

Mr. CHAPOTON. Well, Senator Chafee, we have been examining that question at some length, and we have not reached a conclusion on whether they should be enlarged or not. There are considerations on both sides.

In the 1981 act, of course, the $1,500 was increased to $2,000, and the $1,750 was made $2,250 where there is a nonworking spouse. In addition, as you will remember, you changed the 15-percent limit. So the effect now is that any portion up to one-half of the $2,250 can be put into an IRA, a separate IRA, for the nonworking spouse.

To go beyond that—and some have suggested that it be taken to $4,000 or a full $2,000 for the nonworking spouse—is of course expensive in terms of lost revenue. It also is positive in terms of a savings incentive, which is important and which we think is a very desirable impact of the IRA account now.

So there are just considerations on both sides, and we are still addressing both of them.

Senator CHAFEE. Well, I appreciate your consideration of this. I must say, I don't know myself the answers to the questions you have raised. We sit here and rail against tax expenditures, and then busily create more of them ourselves.

Mr. CHAPOTON. Well, if I might, I think this, while it would fall on the tax-expenditure list, it is a broad-based savings incentive which is available to all persons, to all individuals whether or not covered by employer-sponsored plans. So I think you can have benefits through the tax system. One that is directed toward encouraging savings and is as broadbased as it can be certainly seems a desirable type change.

Senator CHAFEE. Do you have any figures on the incremental amount that might have gone into savings as the result of IRA's? Just a guess?

Mr. CHAPOTON. No, Senator Chafee, I cannot even guess. We do have exact figures on how much has been put into the individual retirement accounts, and as you know it is more than three times our original estimates, which tells you a lot about the marketing of these plans and just how successful they have been. But it is almost impossible to say—that survey data, and I'm not sure even how accurate that would be, how much of that is transferred savings and how much of that is new savings.

I suspect, after a period of years when a lot of families have transferred their existing savings into an IRA, then you will see Christmas clubs and savings clubs spring up which will be a direct encouragement to new savings at many different income levels. But whether the IRA savings is new savings or a transfer of existing savings, we know it is longer term savings now; so we certainly think the benefits are positive.

Senator CHAFEE. Is your principal concern about allowing withdrawal from an IRA for a first time home purchase or tuition for college education that such provisions would reduce the long-term aspects of IRA's as a savings incentive?

Mr. CHAPOTON. I think when you first look at it you think about that, but I really believe, on further analysis, that what you are doing is providing a benefit for savings that would already be made.

On the other hand, a strong case—and I must say this is a close question also—a very strong case can be made for the fact that preventing such withdrawals prevents people from going into IRA's in the first place. I think that's the strongest case for the proposal to allow such withdrawals.

But right now our conclusion is that permitting withdrawals for nonretirement reasons—there are any number of benefits that you would like to encourage savings for, a number of expenditures, such as sickness, education, housing—is not consistent with the purpose of IRA's; they are for retirement, and withdrawals should be limited to that purpose.

Senator CHAFEE. Well, there is a lot of merit in what you say.

Also, I suppose that even if you allowed withdrawals, for example, for tuition for college expenses, there is not much incentive to withdraw, because the withdrawal will be close to the peak earning power of the depositor, or close thereto.

Mr. CHAPOTON. That is correct; that would be an incentive not to. One can argue the other side, that there would not be significant withdrawals for that very reason. Also, you couldn't put the money back in if you withdrew. The argument would go that you ought to allow this withdrawal, if you need it in all events. It probably would not be made, because most people would be reluctant to take it out since they couldn't put it back at a later time. So you are suggesting, and I think I would agree, that it would not happen often.

Senator CHAFEE. Well, the IRA is one of the things that we did around here that seems to have been a success.

Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bradley?

Senator BRADLEY. Mr. Chairman, I don't have any specific questions other than to say that I think the hearing and the two bills are an indication that the committee intends to do something on this matter this year, and I think it is long overdue. I know the chairman definitely wants to get something done, and I appreciate the administration's seriousness as shown by their presence here today.

The CHAIRMAN. They don't dare go home.

Well, we appreciate it very much, Mr. Chapoton. As you recall, at the first hearing I announced that we had asked the administration in this case to wait. We didn't ask you to come first, so we could have some reaction to what I thought was outstanding testimony.

We are going to continue our work. There are a few areas that we are still trying to address with some of the organizations to see if we might go a bit further. And of course, we will be consulting with the administration on these areas. But we have been working closely with the Women's Equity Action League, the BPW, the National Women's Political Caucus, AAUW, and others. There are about 25 groups—the Leadership Conference. So we will be in touch.

But as Senator Bradley indicated, we would like to move on this legislation shortly after the August recess. And with the administration's support, it would seem to me that we could move rather quickly this fall.

Mr. CHAPOTON. That's good, Mr. Chairman. As I said in my statement, we encourage the committee to do so.

The CHAIRMAN. Again, I apologize for the long wait.

Mr. CHAPOTON. No problem.

[Whereupon, at 3:47, the hearing was concluded.]

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